

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Lisitano Produce, Inc.

v.

Civil No. 05-cv-297-PB

Veggi Guys, LLC, et al.

O R D E R

Plaintiff moves for default (document no. 8). Defendant Keith Stern objected on behalf of all defendants (document no. 10) and he has subsequently moved to extend the time only for him to answer (document no. 12). Defendants Veggie Guys, LLC and Robert Cote have not appeared or answered. Defendant Stern has answered.

1. Veggie Guys, LLC and Cote.

These defendants remain in default and the Clerk is directed to enter default against them. An assessment of damages is deferred until all claims are adjudicated.¹ See Fed. R. Civ. P. 54(b).

2. Keith Stern.

"(O)rdinarily actions should be resolved on their merits."
Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989). Defendant may

¹The exhibits as listed in Mr. Lisitano's affidavit were not filed and judgment cannot be entered in any event.

move under Rule 55(c) to set aside the entry of default "for good cause shown." The First Circuit has avoided setting a formula for "good cause" but has listed some factors to consider: willfulness of the default; prejudice to plaintiff if the default is set aside; whether there is a meritorious defense; the explanation for default; the good faith of the parties; the amount of money involved; and the timing of the motion. See id.; General Contracting & Trading Co., LLC v. Interpole, Inc., 899 F.2d 109 (1st Cir. 1990). "Good cause" is more liberal under Rule 55(c) than Rule 60(b). Federal Deposit Ins. Corp. v. Francisco Inv. Corp., 873 F.2d 474, 478 (1st Cir. 1989).

With an answer filed within thirty (30) days of its due date plaintiff has not been prejudiced and the motion for late entry was prompt. The sum involved is not great and the answer contains allegations of a meritorious defense.

The motion for default judgment against Stern is denied and the motion to extend the date for Stern to answer is granted.

SO ORDERED.

/s/James R. Muirhead
James R. Muirhead
United States Magistrate Judge

Date: January 23, 2006

cc: Donald J. Perrault, Esq.
Louis W. Diess, III, Esq.
Carl D. Hanson, Esq.